

## Department of the Army, DoD

## § 536.76

NOTE TO § 536.71: For further discussion see DA Pam 27-162, paragraph 2-80.

### § 536.72 Finality of settlement.

A claimant's acceptance of an award, except for an advance payment or a split payment for property damage only, constitutes a release of the United States and its employees from all liability. Where applicable, a release should include the ARNG or the sending State. For further discussion see DA Pam 27-162, paragraph 2-82.

### Subpart C—Claims Cognizable Under the Military Claims Act

#### § 536.73 Statutory authority for the Military Claims Act.

The statutory authority for this subpart is contained in the Act of August 10, 1956 (70A Stat. 153, 10 U.S.C. 2733), commonly referred to as the Military Claims Act (MCA), as amended by 90-521, September 1968 (82 Stat. 874); Public Law 90-522, September 1968 (82 Stat. 875); Public Law 90-525, September 1968 (82 Stat. 877); Public Law 93-336, July 8, 1974 (88 Stat. 291); Public Law 98-564, October 1984, (98 Stat. 2918); and Public Law 103-337, October 1994 (108 Stat. 2664).

#### § 536.74 Scope for claims under the Military Claims Act.

(a) The guidance set forth in this subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death or personal injury, or damage to, or loss or destruction of, property:

(1) Caused by military personnel or civilian employees (enumerated in § 536.23(b)) acting within the scope of their employment, except for non-federalized Army National Guard soldiers as explained in subpart F of this part; or

(2) Incident to the noncombat activities of the armed services (see AR 27-20, Glossary).

(b) A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under this subpart if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the

claim arose incident to noncombat activities. For example, a claim by a service member for property loss or damage incident to service may be settled if the loss arises from a tort and is not payable under AR 27-20, Chapter 11.

(c) A tort claim arising outside the United States may be settled under this subpart only if the claimant has been determined to be an inhabitant (normally a resident) of the United States at the time of the incident giving rise to the claim. See § 536.136(b).

#### § 536.75 Claims payable under the Military Claims Act.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to, or loss or destruction of, property is payable under this subpart when:

(1) Caused by an act or omission of military personnel or civilian employees of the DA or DOD, acting within the scope of their employment, that is determined to be negligent or wrongful; or

(2) Incident to the noncombat activities of the armed services.

(b) *Property.* Property that may be the subject of claims for loss or damage under this subpart includes:

(1) Real property used and occupied under lease (express, implied, or otherwise). See § 536.34(m) and paragraph 2-15m of DA Pam 27-162.

(2) Personal property bailed to the government under an agreement (express or implied), unless the owner has expressly assumed the risk of damage or loss.

(3) Registered or insured mail in the DA's possession, even though the loss was caused by a criminal act.

(4) Property of a member of the armed forces that is damaged or lost incident to service, if such a claim is not payable as a personnel claim under AR 27-20, chapter 11.

(c) *Maritime claims.* Claims that arise on the high seas or within the territorial waters of a foreign country are payable unless settled under subpart H of this part.

#### § 536.76 Claims not payable under the Military Claims Act.

(a) Those resulting wholly from the claimant's or agent's negligent or